

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X -----  
THOMAS JERMYN, on behalf of himself : CIVIL ACTION NO. 08 CV 00214  
and all others similarly situated, :  
Plaintiff, : ECF ACTION  
-against- :  
BEST BUY STORES, L.P., : DECLARATION OF  
Defendant. : JENNIFER G. DAUGHERTY  
: IN SUPPORT OF DEFENDANT  
: BEST BUY STORES, L.P.'S  
: MEMORANDUM OF LAW  
: IN OPPOSITION TO PLAINTIFF'S  
: MOTION FOR CLASS  
: CERTIFICATION

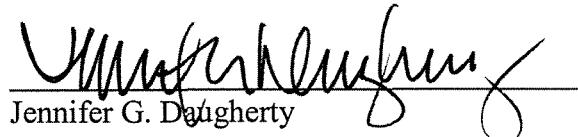
**FILED UNDER SEAL**

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Jennifer G. Daugherty, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Defendant Best Buy Stores, L.P. in this case. I make this Declaration in support of Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Class Certification.
2. Attached to this Declaration as Exhibit 1 is a true and correct copy of excerpts of the deposition transcript of Thomas Jermyn.
3. Attached to this Declaration as Exhibit 2 is a true and correct copy of the deposition transcript of Cynthia Cox-Feeney, being filed under seal.
4. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Minneapolis, Minnesota, this 25th day of June, 2008.

  
Jennifer G. Daugherty

**EXHIBIT NO. 1**

THOMAS JERMYN, MAY 2, 2008

Page 1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 - - - - - X

5 THOMAS JERMYN, on behalf of himself and  
6 all others similarly situated,

7 Plaintiff,

Docket No.

8 08 CV 00214  
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10 BEST BUY STORES, L.P.,  
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12 Defendant.  
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14 DATED: May 2, 2008  
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16 Chestnut Ridge, New York  
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20 Patrick M. DeGiorgio, Reporter  
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THOMAS JERMYN, MAY 2, 2008

	Page 6	Page 8
1	THOMAS JERMYN	
2 Q.	Did that case go to trial?	1 THOMAS JERMYN
3 A.	No.	2 A. 300 East 40th Street, Apartment 7N, New
4 Q.	Did it settle out of court?	3 York, New York 10016.
5 A.	Yes.	4 Q. How long did you live there?
6 Q.	Who was your attorney in that case?	5 A. One year.
7 A.	Craig Langer.	6 Q. Before that?
8 Q.	How do you spell that last name?	7 A. 315 East 88th Street, Apartment 5H, ten
9 A.	L-A-N-G-E-R.	8 years. Ten, eleven years.
10 Q.	Where is Mr. Langer?	9 Q. So you lived at that address for ten or
11 A.	He's in White Plains.	10 eleven years until what year?
12 Q.	A firm in White Plains?	11 A. I think it was 2005, and then I moved to 300
13 A.	Yes.	12 East 40th Street and then I moved to where I
14 Q.	Since that time, have you given a statement	13 live presently, 320 West 119th Street.
15 for any type of lawsuit?		14 Q. The address you lived at for ten or eleven
16 A.	No.	15 years, is that where you lived in May 2005?
17 Q.	The reason why I asked you if you had your	16 A. Yes.
18 deposition taken before is just to go over		17 Q. Could you repeat that address just because I
19 some of the ground rules. Your attorney		18 didn't get that down?
20 helped me out already here by telling you		19 A. 300 East 40th Street.
21 that you have to answer verbally because we		20 Q. Have you lived in New York City all your
22 do have a court reporter here. Okay?		21 life, sir?
23 A.	Okay.	22 A. No.
24 Q.	You either need to say yes or no and not	23 Q. How long have you lived in New York City?
25 just shaking your head.		24 A. Since 1989.
		25 Q. Before that, and I'm not asking for the
	Page 7	Page 9
1	THOMAS JERMYN	
2 A.	Okay.	1 THOMAS JERMYN
3 Q.	If there's a question that you don't	2 exact street address, but where did you
4 understand or I don't make it clear, please		3 live?
5 ask me and I'll rephrase it.		4 A. I lived in White Plains for three years
6 A.	Okay.	5 prior to that when I was in the lawsuit. I
7 Q.	I'll try to wait until you are done	6 lived in South Carolina for four years prior
8 responding before I bring up another		7 to that in college and I grew up in Dutchess
9 question and likewise so we are not talking		8 County, New York.
10 over each other.		9 Q. Your date of birth?
11 A.	Okay.	10 A. 12/27/62.
12 Q.	Do you understand that you are under oath	11 Q. Did you meet with your attorney to prepare
13 today, sir?		12 for your deposition today?
14 A.	Yes.	13 A. Yes.
15 Q.	We've already asked for your address. How	14 Q. By your attorney, I mean Mr. Braunstein who
16 long have you lived at the address you		15 is sitting here next to you?
17 provided to the court reporter?		16 A. Yes.
18 A.	Two years.	17 Q. Anyone else present at that meeting?
19 Q.	What was the city again?	18 A. No.
20 A.	New York.	19 Q. When did you meet with him?
21 Q.	You live in New York City?	20 A. This morning. We spoke by telephone and
22 A.	Yes.	21 communicated by e-mail.
23 Q.	Where did you live before that?	22 Q. Of course I'm not looking into the substance
24 A.	New York City, another address.	23 of those conversations, but how long did you
25 Q.	What was your previous address?	24 meet with Mr. Braunstein this morning?
		25 A. Fifteen minutes.

3 (Pages 6 to 9)

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THOMAS JERMYN, MAY 2, 2008

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 Q. With a firm?	2 this firm?
3 A. Sole practitioner.	3 A. By telephone or in person?
4 Q. Other than Mr. Plotkin, the other firm that	4 Q. We will start by telephone.
5 you spoke with or counsel at another firm	5 A. Yes.
6 was Mr. Braunstein's firm?	6 Q. What was the date?
7 A. Yes.	7 A. Approximately April of '07.
8 Q. When did you first decide that you wanted to	8 Q. Did you call them or did they call you?
9 take legal action against Best Buy?	9 A. I called them.
10 A. When I was in the store. When I tried to	10 Q. Who did you speak with?
11 return the camera and see if they would	11 A. Mr. Michael Braunstein.
12 honor the Price Match Guarantee.	12 Q. When was the first time you met with anyone
13 Q. What was that date?	13 at this firm in person?
14 A. May 13th, 2005 -- no, that's when I	14 A. It was a few months later. About September
15 purchased it. May 20th, 2005.	15 or October of '07.
16 Q. So these efforts that you've described to	16 Q. At any time did you see any advertisements
17 seek out counsel, did you commence those	17 or soliciting by Mr. Braunstein's firm for
18 immediately after returning the camera on	18 this type of class action?
19 May 20th?	19 A. No.
20 A. Yes.	20 Q. It was purely on your own volition that you
21 Q. So that -- (interrupted)	21 contacted Mr. Braunstein's firm?
22 A. Informally. I made a mental note. I said I	22 A. Yes.
23 think I want to do something about this. I	23 Q. Is the reason why you waited a few years
24 even told them in the store. So I started	24 after the incident to file this lawsuit was
25 gathering information and things like that,	25 because you didn't have counsel to represent
Page 19	Page 21
1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 going online, checking out blogs and seeing	2 you?
3 if this was a potential case. Information	3 A. I was looking around, but I travel a lot
4 gathering.	4 with my business. I'm down in Florida a
5 Q. You said you didn't engage counsel until	5 lot, South Carolina, and I just got caught
6 mid-2007; is that correct?	6 up in things and I put it on the back
7 MR. BRAUNSTEIN:	7 burner. It was waiting on my desk until I
8       Object to the form. I think the	8 finally decided to go forward. It was
9 testimony was mid-2007 was also six months	9 something that was on my desk since 2005 and
10 from today's date or approximately	10 I didn't want to put it away until I finally
11 thereabouts.	11 met these guys in person. I knew the
12 MS. DAUGHERTY:	12 statute of limitations was moving on it too.
13       You can object to misstating the	13 Q. You said you have businesses in Florida and
14 testimony.	14 South Carolina?
15 Q. Tell me what you did say?	15 A. Yes.
16 MR. BRAUNSTEIN:	16 Q. What do you do?
17       You can answer over my objection.	17 A. Real estate.
18 A. Yeah, when I finally sat down with these	18 Q. Do you fly there or drive there on a
19 guys I realized they were a good firm and	19 periodic basis?
20 they were -- I was going to give it to them	20 A. Monthly basis.
21 as soon as I met them.	21 MR. BRAUNSTEIN:
22 MS. DAUGHERTY:	22       Wait for the question to be completed.
23 Q. I'll reask my question. Do you remember the	23 MS. DAUGHERTY:
24 first day you met with either Mr.	24 Q. Is it a regular practice of yours to travel
25 Braunstein, Mr. Graifman or anyone else with	25 for your business?

6 (Pages 18 to 21)

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THOMAS JERMYN, MAY 2, 2008

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1                   THOMAS JERMYN 2 you can answer. 3 A. Right. Either like I said they bought 4 something and then in the interim, the 5 statutory period, that they say on their 6 either thirty days or fourteen in some 7 circumstances, if you find a competitor's 8 price and bring it in there and they will 9 return it or lower the price with a 10 10 percent discount. People that are shopping 11 before they bought something and have an 12 advertisement on the Best Buy website or 13 something, a publication, and they see that 14 you can bring an advertisement cheaper 15 before they buy it, will they honor it 16 there? That's not exactly like mine, like 17 my case, but the first instance that I 18 mentioned, the people that actually bought 19 something are the ones more similar to my 20 case. 21 Q. Sir, you would agree these websites you look 22 at there's a variety of instances relating 23 to people going in and trying to get -- 24 (interrupted) 25 A. Either returns or -- sometimes having to do	1                   THOMAS JERMYN 2 whether it's discretionary or whether they 3 will honor the price guarantee or not. One 4 of them said that if it was \$10 or \$20 most 5 of the time they would, but if it got over a 6 certain limit like a hundred dollars they 7 wouldn't honor it. That's what it said in 8 one of the blogs. One of them mentioned 9 having a different website in the store. 10 There were a lot of complaints against Best 11 Buy, not all exactly like my case. The only 12 ones I'm really concerned about are the ones 13 similar to mine, people that bought 14 something and when they tried to return it 15 and get the guarantee pursuant to their 16 Price Match Guarantee it wasn't honored. 17 Q. When you looked at these blogs, these people 18 that wrote in, they described what the 19 management told them when they tried to get 20 the Price Match Guarantee? 21 A. Sometimes. Sometimes they would talk about 22 the attitude in the store, like the policy 23 of the store manager or the employees how 24 they were treated. Sometimes the facts 25 weren't the same as mine, but the treatment
Page 35	Page 37
1                   THOMAS JERMYN 2 with gift cards or buying or anticipation of 3 purchasing to see if it will match before 4 some -- that some people try to do it 5 beforehand, some people wait afterwards, and 6 the other ones were somewhat combined 7 between the gift cards and rebates and price 8 matching and refunds. 9 Q. So there were a variety of circumstances? 10 A. Correct. 11 Q. When you looked at these blogs, did these 12 people, whomever was writing the blog, did 13 they discuss representations that were made 14 in the store to them? Do you want me to 15 clarify? 16 A. Yes. 17 Q. Did they tell what the Best Buy people told 18 them? Did they relay what a manager or 19 customer service representative told them? 20 A. Some cases yes, some cases no. 21 Q. There was -- was there a lot of discussion 22 on these blogs, I guess the oral 23 communications between the Best Buy workers 24 and them? 25 A. Yeah. It just seemed to me a pattern of	1                   THOMAS JERMYN 2 of the employees seemed the same. There was 3 some connection between all of them in my 4 case, but not all identical facts. 5 Q. There was a variety of responses by 6 management or a variety of conversations 7 that these people had with management or 8 Best Buy employees; right? 9 A. Yes. 10 Q. They weren't all exactly the same as yours? 11 A. It wasn't so much of the response of the 12 Best Buy employees that they were getting 13 at, more of the result of what happened and 14 how it wasn't what they were advertising. 15 Q. So what you are looking at is when you read 16 these, what struck you in part was the 17 result that these people related? 18 A. Yes. It was similar because the people were 19 getting no satisfaction and in violation of 20 what appeared to be the written policy. 21 Q. However, you would agree that these were a 22 variety of circumstances, a variety of 23 stores; right? 24 A. Yes. 25 Q. And, in fact, we are not sure that all these

10 (Pages 34 to 37)

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THOMAS JERMYN, MAY 2, 2008

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2   people were trying to get the benefit of	2   buy it at Best Buy. So I made a printout of
3   Best Buy's Price Match Guarantee?	3   the advertisement from Tristate, their
4   A. Right.	4   competitor, took it there and then they
5   Q. Do you know who wrote these blogs?	5   informed me that they wouldn't honor the
6   A. No.	6   guarantee, they wouldn't reduce the price
7   Q. Have you ever tried to contact anybody that	7   and they would charge me the restocking fee
8   wrote these blogs?	8   if I tried to return it. I figure outside
9   A. No.	9   the price with the restocking fee from the
10   Q. Did you ever write a blog?	10   other camera place and it was still 860 plus
11   A. No.	11   180, it came out to 1,040 as opposed to
12   Q. Ever write a comment to a blog?	12   1,199 minus a hundred or 1,099. It was
13   A. No.	13   still \$50 or less with paying the restocking
14   Q. With respect to these blogs, you simply just	14   fee. They railroaded me out of the store
15   read them?	15   and I tried to get information from them
16   A. Just read them.	16   saying what is it about this case that
17   Q. I want to go into the facts of what happened	17   doesn't fit your guarantee and they wouldn't
18   in this case, sir. I understand that you	18   give me an answer. Nobody could give me a
19   purchased a camera on May 13th, 2005; is	19   square answer, so I mentioned that I was an
20   that correct?	20   attorney and I was going to pursue this case
21   A. Yes.	21   and they said fine, go ahead. They didn't
22   Q. Why don't you just start at the beginning	22   seem to be worried about that. It almost
23   and tell me what happened?	23   looked like they had dealt with this
24   A. I wanted to buy a Nikon D70 and one of the	24   situation many times the way they handled
25   reasons I chose Best Buy was because of the	25   it. Like I said, it was very robotic and
Page 39	Page 41
1                   THOMAS JERMYN	1                   THOMAS JERMYN
2   Price Match Guarantee. There was a store	2   there was no listening to what I had to say.
3   near to where I lived and I went in there	3   I would have gladly given the business to
4   and bought the camera knowing that they --	4   Best Buy had they lowered the price. I
5   knowing the Price Match Guarantee. I	5   tried to reason with the manager of the
6   figured I would look around in the next	6   store saying I'm a good customer, I bought
7   thirty days or fourteen days and see if	7   many things here, why not reward someone who
8   anybody has it for less, the D70, in the	8   is a loyal customer rather than lose a
9   meantime. I asked them before I bought it,	9   customer and they didn't care what I said.
10   they said no problem. I wasn't aware of	10   They just kind of wanted me out of the store
11   anybody that had any problems at Best Buy	11   before I made a scene. I returned the
12   prior to that. So a week later walking near	12   camera, bought it at Tristate, paid the
13   the store, because I worked in that area and	13   restocking fee, it was still \$49 less and
14   walked by it a lot, I happened to walk by	14   then I started searching around for my --
15   Tristate Camera which is about three blocks	15   looking at my legal remedies. A year and a
16   away from the Best Buy store and saw the	16   half later I found Graifman's office.
17   camera and asked them how much it was. I	17   Q. I believe you said it was \$59 less at one
18   thought it was 959 before the hundred dollar	18   point and now you just said \$49 less.
19   rebate. It was May 20th, so it was within	19   A. It was 859 after the rebate from Tristate
20   the statutory period on the Best Buy	20   and it was 1,099 after the rebate from Best
21   guarantee. There were no restrictions or no	21   Buy. 859 plus 180 for the restocking fee
22   fine print because of the type of material.	22   came out to be 1,059. So it was still
23   They limited it from thirty to fourteen	23   cheaper.
24   days, so I was still within that. I brought	24   Q. Let's back up here. On May 13th, did you
25   the camera back to Best Buy fully wanting to	25   have --

11 (Pages 38 to 41)

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THOMAS JERMYN, MAY 2, 2008

<p style="text-align: right;">Page 46</p> <p>1                   THOMAS JERMYN 2   B&amp;H. I may have looked at it once or twice 3   to see what kind of features it had on it. 4   I didn't check the price or anything like 5   that.</p> <p>6   <b>MR. BRAUNSTEIN:</b></p> <p>7    I don't want you to guess. You were 8   saying you may have done that. If you think 9   you did it or you are pretty sure you did 10   it, just tell us in those words. Neither of 11   us want you to guess at those answers.</p> <p>12   A. I don't recall.</p> <p>13   <b>MS. DAUGHERTY:</b></p> <p>14   Q. That's fine. As your attorney said, I'm not 15   asking for you to speculate at all. To the 16   best of your recollection what you did, 17   that's what I want to know.</p> <p>18   A. Okay.</p> <p>19   Q. So you believe that you had looked at a 20   couple different stores including B&amp;H and 21   Circuit City?</p> <p>22   A. Uh-huh.</p> <p>23   Q. Yes?</p> <p>24   A. Yes.</p> <p>25   Q. Would you say this was in May 2005 as well,</p>	<p style="text-align: right;">Page 48</p> <p>1                   THOMAS JERMYN 2   that you decided to go to Best Buy to 3   purchase this camera on May 13th was because 4   you thought they had a reputation for the 5   best prices?</p> <p>6   A. Yes.</p> <p>7   Q. Is that in a nutshell what you said?</p> <p>8   A. Yes.</p> <p>9   Q. Is there any other reason why you went to 10   Best Buy on May 13th to buy this camera?</p> <p>11   A. Just because it was convenient.</p> <p>12   Q. At that time did you know about Best Buy's 13   Price Match Guarantee?</p> <p>14   A. Yes.</p> <p>15   Q. Was that another reason you went to Best 16   Buy?</p> <p>17   A. Yes.</p> <p>18   Q. When you went to Best Buy to purchase this 19   camera, did you have the specific intention 20   of buying the camera and looking around and 21   then perhaps trying to get the benefit of 22   the guarantee?</p> <p>23   A. Looking back on it, yes.</p> <p>24   <b>MR. BRAUNSTEIN:</b></p> <p>25                   Just in general, wait for her to</p>
<p style="text-align: right;">Page 47</p> <p>1                   THOMAS JERMYN 2   but before May 13th?</p> <p>3   A. April, maybe March. If I recall correctly, 4   the camera was kind of new at that time. 5   The D70 wasn't out that long.</p> <p>6   Q. Did you ever have any intention of 7   purchasing the camera at either B&amp;H or 8   Circuit City?</p> <p>9   A. I had never bought any camera equipment 10   anyplace else in the city except Ken Hansen. 11   My original intention was to buy it there. 12   I had developed a relationship with Ken 13   Hansen himself and salespeople, but for some 14   reason either he wasn't in business at that 15   time or he was -- I know he moved to Florida 16   and came back. One reason or another I 17   didn't buy it at Ken Hansen.</p> <p>18   Q. How do you spell that?</p> <p>19   A. Ken H-A-N-S-E-N.</p> <p>20   Q. Does he have a store right now?</p> <p>21   A. I'm not even sure. He's known locally as 22   one of the best photo places where you could 23   get used gear and a professional shop at his 24   store.</p> <p>25   Q. I believe you stated one or the main reasons</p>	<p style="text-align: right;">Page 49</p> <p>1                   THOMAS JERMYN 2   finish the question. You may know what the 3   question is or is going to be, but it's much 4   easier for the court reporter. Let her 5   finish the question before you answer.</p> <p>6   A. Yes, because I had inquired when I bought 7   the camera specifically whether -- what the 8   policy was, just in case. I didn't really 9   do too much research when it came to price, 10   but then I just figured this is a good 11   policy as far as the Price Match Guarantee 12   even after, so I figured if I'm going to do 13   it I better do it quick, like in the first 14   week, so I don't have to have this issue, 15   this thing that's excluded because on their 16   form it says some items have a fourteen-day 17   limit. Generally most items are thirty-day, 18   but just to be safe I said if I'm going to 19   find something I better do it quick so I 20   won't have to worry about them -- (interrupted)</p> <p>21   Q. You did or did not know about the Price 22   Match Guarantee before May 13th, 2005?</p> <p>23   A. I did know about the price guarantee.</p> <p>24   Q. That was a factor in your decision to go to</p>

13 (Pages 46 to 49)

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THOMAS JERMYN, MAY 2, 2008

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<p>1                   THOMAS JERMYN</p> <p>2 when I was buying the camera, but when I 3 came back that's when their attitude 4 changed.</p> <p>5 Q. My question was, what did the employee say 6 to you or what was the communication when 7 you got to the camera shop area? Let's 8 start with this, it would be easier with the 9 question I asked you. You go over to the 10 camera area -- (interrupted)</p> <p>11 A. Do you have the D70 in stock?</p> <p>12 Q. That's all you asked them?</p> <p>13 A. Yes. They said yes, we do.</p> <p>14 Q. You said something like let me take a look 15 at it?</p> <p>16 A. I didn't even open it. It's all shrink 17 wrapped and everything. They had it in 18 stock and I took it. Before I took it I 19 wanted to make sure what the policy was as 20 far as returning it.</p> <p>21 Q. Okay.</p> <p>22 A. I figured I might see these people within 23 the next thirty days. I think if I 24 mentioned it beforehand they would remember 25 me if I did come back. They assured me</p>	<p>1                   THOMAS JERMYN</p> <p>2 Q. How about the features, did you ask any 3 questions?</p> <p>4 A. No. You can tell whether it's worth your 5 time or not if they know what they are 6 talking about. I knew what I was getting 7 and they weren't going to help me or 8 persuade me any more than what I already 9 knew.</p> <p>10 Q. You said you never took the camera out of 11 the box when you were at the store?</p> <p>12 A. No.</p> <p>13 Q. Did you look at the display model?</p> <p>14 A. Yeah. They have it chained with the lock on 15 it. You can pick it up. You can't use it, 16 it's not -- the battery is not charged and 17 there's no card in there. You can feel how 18 it feels in your hand, look through it.</p> <p>19 Q. In addition to the substantive questions, if 20 any, that you may have asked about the 21 camera, you said you asked about a rebate 22 did you say?</p> <p>23 A. Yes.</p> <p>24 Q. Tell me about this rebate?</p> <p>25 A. Nikon had a hundred dollar rebate on the</p>
Page 55	Page 57
<p>1                   THOMAS JERMYN</p> <p>2 quickly that there would be no problem if it 3 was within the thirty days.</p> <p>4 Q. So I appreciate the fact that you have a lot 5 of camera experience and therefore you did 6 not ask any questions specifically about the 7 camera; correct?</p> <p>8 A. I may have, but I quickly realized they 9 didn't know what they were talking about. 10 You don't go into a store like that looking 11 for finer points of cameras or things like 12 that. I've known that from past experience. 13 Maybe TVs or stereos, but when it comes to 14 cameras, maybe the low end they may 15 understand better, but when it comes to the 16 high end, it's technical things. Unless you 17 are a photographer you are not going to know 18 that unless you use the camera every day. 19 The features on the camera are pretty 20 technical.</p> <p>21 Q. You went up to the counter, they said yes, 22 we have the camera in stock, they gave it to 23 you, you maybe would have asked questions 24 about the features?</p> <p>25 A. And the rebate.</p>	<p>1                   THOMAS JERMYN</p> <p>2 camera. I wanted to make sure I got the 3 right receipt and how soon I had to send it 4 in. They printed me up a receipt.</p> <p>5 Q. Where did they print up the rebate receipt?</p> <p>6 A. At the Best Buy.</p> <p>7 Q. Is that when you purchased the camera, going 8 through the checkout line?</p> <p>9 A. Yes. It all comes out at the same time.</p> <p>10 Q. When you spoke with the person, we will call 11 that person the camera salesman, the person 12 that sold you the camera itself, not the 13 other person -- they were two different 14 people?</p> <p>15 A. Yes. Well, I don't recall to tell you the 16 truth. I don't know whether the person 17 followed me up to the register or you go to 18 the front. I'm not sure whether it was the 19 same person or not.</p> <p>20 Q. Fair enough. We will say the camera 21 salesman who I'm referring to as the 22 salesman that got the camera out of the 23 glass case for you. In addition to asking 24 about the rebate, did you ask that person 25 about the Price Match Guarantee?</p>

15 (Pages 54 to 57)

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THOMAS JERMYN, MAY 2, 2008

Page 62	Page 64
1           THOMAS JERMYN 2       Store on West Canal Street. There's a lot 3       of retail electronic dealers in New York 4       that advertise low prices, you can get a 5       great market camera, no warranty. Just 6       assuming by going to Best Buy you are going 7       to get the best price or something better. 8       MS. DAUGHERTY: 9        Read back the question. 10 11      (QUESTION REPEATED BY REPORTER) 12 13 A.     Which person? 14       MR. BRAUNSTEIN: 15        Just for context, correct me if you 16       think I'm wrong, we are talking about at the 17       checkout line and talking about the Price 18       Match Guarantee? 19       MS. DAUGHERTY: 20        That's correct. 21 Q.     What did you say to that person? 22 A.     Will you honor the Price Match Guarantee? 23       Is there anything I should know about this 24       that is not shown on the front of this page. 25       I remember seeing an asterisks on there	1           THOMAS JERMYN 2       like? 3 A.     No. 4 Q.     Do you remember how old this person was? 5 A.     I just remember kind of thinking like high 6       school age woman, black. 7 Q.     Black woman? 8 A.     Yes. 9 Q.     High school age? 10 A.    Yes. 11 Q.    Okay. 12 A.    Nineteen, twenty, twenty-one. 13 Q.    So you are fairly certain neither of these 14       people that we discussed so far were 15       management level? 16 A.    Yes, I'm pretty certain. Nobody made a big 17       impression on me. I can't say whether it 18       was the same people when I went back. It 19       wasn't like -- (interrupted) 20       MR. BRAUNSTEIN: 21        We will get to that. 22 MS. DAUGHERTY: 23 Q.     You said that you saw on the front of the 24       page something about the Price Match 25       Guarantee. Do you remember saying that a
1           THOMAS JERMYN 2       about the days. They said don't worry about 3       it, as long as it's within thirty days. I 4       just assumed the asterisks mentioned 5       something. I made a mental note at the 6       time, make sure if you do something it's 7       within fourteen days to avoid any problem 8       down the road. 9 Q.     This person that you actually physically 10      purchased a camera from in the checkout 11      line, was that a store clerk, manager, 12      assistant manager? 13 A.     They are all store clerks. No manager until 14      the second time I went in. 15 Q.     Was that a male or female? 16 A.     I think it was female, the person at the 17      checkout counter and a male that said you 18      want this camera. 19 Q.     So the first person in the camera area was a 20      male? 21 A.     Yes. 22 Q.     Second person was a female when you actually 23      paid with your credit card? 24 A.     Yes. American Express. 25 Q.     Do you remember what this person looked	1           THOMAS JERMYN 2       minute ago? 3 A.     Yeah. There was like some asterisks on 4       there and thinking there has to be some fine 5       print on the back, something on the bottom. 6       It says the time period was the main thing I 7       was worried about, thirty days. There's 8       like an asterisks that says fourteen days on 9       some items. It doesn't specify what they 10      are, so I was thinking in that case if it's 11      vague I'm going to assume that they mean 12      cameras, so that's basically what I meant. 13 Q.     We have it on the record about everything 14      you talked about with regard to the 15      asterisks, I'll ask you about that later if 16      I want to know more specifically about that. 17      When you say the front of the page, are you 18      referring to the Price Match Policy? 19 A.     Yes. The reason I said the front of the 20      page was it was actually translated on the 21      back. Spanish on the back, English on the 22      front. I remember looking on it and saying 23      maybe the back was fine print or conditions 24      for the front, but it was just the same 25      thing in Spanish.

17 (Pages 62 to 65)

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THOMAS JERMYN, MAY 2, 2008

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1	THOMAS JERMYN	1	THOMAS JERMYN
2	MS. DAUGHERTY:	2	A. No. Like I told you before, I was used to
3	For the record as well, this was asked	3	buying cameras -- (interrupted)
4	for in our document requests specifically.	4	MR. BRAUNSTEIN:
5	Best Buy is entitled to this document and	5	Listen to the question and answer the
6	the photocopy of the backside.	6	question.
7		7	A. Where I could bring them back, so I just
8	(REQUESTED INFORMATION HERE)	8	wanted to make sure a quick conversation
9		9	whether I could bring it back.
10	MR. BRAUNSTEIN:	10	MS. DAUGHERTY:
11	Okay.	11	Q. You said can I bring it back?
12	MS. DAUGHERTY:	12	A. Yes.
13	We won't be following up in writing,	13	Q. You weren't asking in the context of just to
14	you can take a look at that, it's in the	14	return it, you were asking could you bring
15	document request.	15	it back to get the benefit of the Price
16	Q. Now we are talking to the salesgirl, you are	16	Match Guarantee?
17	at the checkout counter. What did you say	17	A. Yes.
18	to her about the Price Match Policy, if	18	Q. Did you make that clear when you said that
19	anything?	19	to the person in the checkout line?
20	A. I think I was -- I think I had discussed it	20	A. I don't recall.
21	with the salesman and the salesperson just	21	Q. So it's possible that that person could have
22	ran my credit card.	22	thought you were maybe talking about a
23	Q. Maybe this could be my inaccuracy. I	23	return policy?
24	thought you weren't sure or you didn't think	24	MR. BRAUNSTEIN:
25	you spoke to the camera salesperson about	25	Objection to the form. You can answer
Page 75		Page 77	
1	THOMAS JERMYN	1	THOMAS JERMYN
2	it, but you may have.	2	over objection.
3	A. I'm not sure whether it was him or the woman	3	A. It could, yes.
4	who -- I remember talking to them and just	4	MS. DAUGHERTY:
5	making sure it was -- I had the right to	5	Q. Or that person could think that in asking if
6	bring it back and bring in a competitor's ad	6	you would bring it back you were talking
7	or whatever.	7	about bringing it back for a number of other
8	Q. You don't recall whether it was the camera	8	Best Buy policies?
9	salesperson or the checkout woman?	9	MR. BRAUNSTEIN:
10	A. No. I'm not sure if it was one person who	10	Objection to the reason you are
11	did both or if I'm getting it confused at	11	speculating what the other person would
12	other times with other stores. I don't	12	think, but you can answer.
13	remember what the store was like at that	13	A. I don't understand the question.
14	time as opposed to the next time I went.	14	MS. DAUGHERTY:
15	Q. It's true when you discussed the Price Match	15	Q. The other person could think when you --
16	Policy with somebody on May 13th, 2005 it	16	when you ask could I bring it back, it could
17	was with a store clerk, not a store manager?	17	be for a number of reasons; right?
18	A. Yes.	18	MR. BRAUNSTEIN:
19	Q. It's true you do specifically remember	19	Same objection. You can answer.
20	discussing the Price Match Policy in some	20	A. Sure.
21	form with someone at the store on May 13th?	21	MS. DAUGHERTY:
22	A. Yes.	22	Q. Not necessarily the Price Match Guarantee?
23	Q. I know you said you asked about the policy.	23	A. Right. I could bring it back for any
24	Specifically can you tell me anything else	24	reason, if I didn't like it, if it didn't
25	that you asked?	25	work well, that I could return it for any

20 (Pages 74 to 77)

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THOMAS JERMYN, MAY 2, 2008

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 salesman. They go to the clinics that the	2 Q. If you look in the lower right-hand corner,
3 camera companies put on. You are better off	3 it looks like a date is imprinted on here
4 buying it at a place like that than at a	4 5/19/05. Do you see that?
5 commodities place. You get better service.	5 A. Yes. It's also on the top left too.
6 Sometimes there's problems. That's why I	6 Q. To the best of your recollection, was the
7 bought all my equipment at Ken Hansen	7 first time that you saw this advertisement
8 before. They will buy back the equipment	8 online May 19th, 2005?
9 too.	9 A. I'm not sure, because that might have been
10 Q. At the time when you went into Best Buy on	10 the day I printed it. I'm not sure if I got
11 May 13th, 2005, did you have the intent to	11 it May 14th, May 13th. I'm not exactly
12 specifically go to Tristate to try to find	12 sure. This was when I printed it and I
13 the same camera?	13 printed it so I could take it to the store.
14 A. No, I would have gone anywhere.	14 Q. In any event, you printed it on May 19th,
15 Q. But you did have the intent to shop around?	15 2005?
16 A. Yes.	16 A. Yes.
17 Q. At that point you didn't know that I'm going	17 Q. You look at the bottom right-hand corner, it
18 to Tristate next?	18 looks like the time that you printed it off
19 A. Yes.	19 was cut off. Do you see that?
20 Q. Had you ever been into Tristate before	20 A. Uh-huh.
21 purchasing -- (interrupted)	21 Q. Yes?
22 A. Yes.	22 A. Yes.
23 Q. -- the camera?	23 Q. Looks to me like the first number could be a
24 A. Yes.	24 4. Do you have any idea what the first
25 Q. Tell me after you left Best Buy, where did	25 number is or when you printed it off would
Page 83	Page 85
1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 you shop around?	2 be a fairer question?
3 A. Probably online. May have looked in a store	3 A. 4:30 in the afternoon.
4 or two.	4 Q. Now, had you ever been into the Tristate
5 Q. What stores do you think you looked in?	5 store before May 19th, 2005?
6 A. Probably B&H would be the first one and	6 A. Yes.
7 maybe looked online. I think I looked in	7 Q. When had you first gone into Tristate?
8 the back of Peterson's Photography. Some of	8 A. Maybe five years earlier. They are a
9 the magazines have camera distributors	9 well-known store.
10 and/or advertisements in the back.	10 Q. In New York?
11 Q. This was between the date of your purchase,	11 A. Yes.
12 May 13th, and the date of the return, May	12 Q. You maybe went in five years earlier for an
13 20th?	13 unrelated reason?
14 A. Yes.	14 A. Yes. It's the kind of store that you are
15 Q. Showing you what has been marked as	15 walking around and you may want to go in and
16 Defendant's Exhibit B.	16 see if they have a good deal on lenses or
17 (Document submitted)	17 bags or whatever. They are a reputable
18 A. Okay.	18 store.
19 Q. Have you had a chance to look at it?	19 Q. At the time you printed out this
20 A. Yes.	20 advertisement on May 19th, 2005, had you
21 Q. What is that document?	21 been in the Tristate store within the prior
22 A. This was the printout from a computer ad	22 three weeks?
23 that Tristate Cameras had at the time I	23 A. No, I don't think so, because I really would
24 purchased, that I took a copy of this over	24 have looked and gotten the price on this.
25 to Best Buy.	25 It was only by mistake thinking that Best

22 (Pages 82 to 85)

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THOMAS JERMYN, MAY 2, 2008

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2   Buy was selling it -- (interrupted)	2   price was and find out what their price was.
3   MR. BRAUNSTEIN:	3   Q. I think your testimony is a little
4        Listen to the question and answer the	4        inconsistent. It could be just bad
5        question.	5        questions. Just to clear everything up,
6   A. No, I hadn't. I would have otherwise never	6        from the time you purchased the camera at
7        gone to Best Buy.	7        Best Buy on May 13th, 2005, when was the
8   MS. DAUGHERTY:	8        first time you went into Tristate?
9   Q. After you purchased the camera on May 13th,	9   A. I thought you were talking about prior to
10   you had not been inside the Tristate store	10   May 13th.
11   before you printed it up? This I mean	11   Q. That's all right.
12   Exhibit B.	12   A. The first time may have been -- I'm not
13   MR. BRAUNSTEIN:	13   exactly sure of the dates, but probably two
14       I'm not sure I understand the	14   or three days afterwards.
15       question. Read it back.	15   Q. You went into Tristate -- (interrupted)
16	16   A. I knew the clock was running --
17       (QUESTION REPEATED BY REPORTER)	17   (interrupted)
18	18   Q. Let me finish the question. I just want you
19   MS. DAUGHERTY:	19   to answer the questions that I ask. At the
20   Q. There's no objection on the record, so did	20   time --
21   you understand my question?	21   MS. DAUGHERTY:
22   A. Yes.	22       Strike that.
23   Q. Your answer was?	23   Q. You purchased the Best Buy camera on May
24   A. No.	24   13th. You went to Tristate between that
25   Q. When you found this advertisement, you	25   time and May 19th when you printed this out;
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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2   printed it out; right?	2   is that correct?
3   A. Yes.	3   A. Yes.
4   Q. And you went back to Best Buy the next day;	4   Q. You went into Tristate for the purpose of
5   is that right?	5   seeing if they had the same camera at a
6   A. Yes.	6   lower price?
7   Q. May 20th?	7   A. Yes.
8   A. Yes.	8   Q. At some time after you went into the
9   Q. You went to Best Buy before you actually	9   Tristate store you printed this online?
10   went into the Tristate store; right?	10   A. Yes.
11   A. Yes.	11   Q. And is this the exact same price that was
12   Q. Did you ever go into the Tristate store	12   offered in the store, the Tristate store?
13   before returning the camera at Best Buy to	13   A. Yes.
14   see if the Tristate store would honor this	14   Q. When you were in Tristate, between May 13th
15   ad?	15   and May 19th, did you specifically ask
16   A. Of course. You're asking between whether	16   Tristate if they had a website that offered
17   the 13th and 20th I went into Tristate to	17   the same prices?
18   find out what the price was? Yeah, I did.	18   A. No. I went in there shopping for the price
19   I found out that the price was this	19   and then I got a quote from the guy and then
20   because -- I went in the store first and	20   I said let me make sure you have that -- no.
21   then I may have gone in there on like the	21   I think I might have gone back to Best Buy
22   17th or 16th and then realized I had to get	22   and they said you have to have it in writing
23   something in writing because, you know, they	23   or just print it up, if it's not in a
24   wanted this at Best Buy. I printed it up	24   publication that's mailed out or given out,
25   and went in. I wanted to find out what the	25   print up the page on their website that

23 (Pages 86 to 89)

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<p>1           THOMAS JERMYN</p> <p>2    shows what you are telling me and then I did</p> <p>3    and then they still wouldn't honor it.</p> <p>4 Q.    Okay.</p> <p>5 A.    When I went in there on the 20th.</p> <p>6    MR. BRAUNSTEIN:</p> <p>7       Listen to the questions and answer the</p> <p>8    questions.</p> <p>9    MS. DAUGHERTY:</p> <p>10 Q.   When did you go into Best Buy next after May</p> <p>11 13th, 2005?</p> <p>12 A.   Probably on the 18th or maybe on the 19th.</p> <p>13 Q.   Let's say you went in on the 18th or 19th.</p> <p>14 You had already been in the Tristate store?</p> <p>15 A.   Yes.</p> <p>16 Q.   You saw that they offered the same camera at</p> <p>17 a different price?</p> <p>18 A.   Yes.</p> <p>19 Q.   At the time you went into Best Buy on May</p> <p>20 18th or 19th it's true you had not yet</p> <p>21 printed this off online?</p> <p>22 A.   Yes.</p> <p>23 Q.   You went into Best Buy. What did you do?</p> <p>24 A.   I said your guarantee says that you will</p> <p>25 honor lower prices or match lower prices</p>	<p>1           THOMAS JERMYN</p> <p>2 Q.    He or she, do you remember?</p> <p>3 A.    I think it was a lady. She said bring it in</p> <p>4 in writing.</p> <p>5 Q.    You are sure this lady at the customer</p> <p>6 service desk was not a manager?</p> <p>7 A.    I'm not sure.</p> <p>8 Q.    In any event -- (interrupted)</p> <p>9 A.    I don't know how many managers they have.</p> <p>10 On the 20th when someone came out it was a</p> <p>11 man when I asked to see a manager.</p> <p>12 Q.   In any event, on the 18th or 19th you did</p> <p>13 not ask to see a manager?</p> <p>14 A.   No.</p> <p>15 Q.   You spoke with the person that was at the</p> <p>16 customer service desk?</p> <p>17 A.   Yes.</p> <p>18 Q.   She said you need to get something in</p> <p>19 writing to show what the price is at</p> <p>20 Tristate?</p> <p>21 A.   Yes.</p> <p>22 Q.   You left the store?</p> <p>23 A.   Yes.</p> <p>24 Q.   And then you went to your home; is that</p> <p>25 right, and printed this out?</p>
<p>1           THOMAS JERMYN</p> <p>2 with the 10 percent -- and add 10 percent</p> <p>3 onto the lowest price -- I mean 10 percent</p> <p>4 discount to the lowest price. Here is what</p> <p>5 I got at Tristate Cameras -- no, around the</p> <p>6 corner they have it for less. They said you</p> <p>7 have to get something in writing. I think I</p> <p>8 went back and got it in writing and had to</p> <p>9 go back again.</p> <p>10 Q.   Who did you talk to when you went into the</p> <p>11 Best Buy store on May 18th or 19th?</p> <p>12 A.   It wasn't the manager. I remember seeing</p> <p>13 the manager one time only, so it was just</p> <p>14 somebody at customer service.</p> <p>15 Q.   Did you go straight to the customer service</p> <p>16 desk?</p> <p>17 A.   I think so.</p> <p>18 Q.   You walked into the Best Buy on the 18th or</p> <p>19 19th and went to the customer service desk;</p> <p>20 right?</p> <p>21 A.   Yes.</p> <p>22 Q.   You said I purchased a camera here the other</p> <p>23 day, around the corner at Tristate they have</p> <p>24 a lower price?</p> <p>25 A.   Yes.</p>	<p>1           THOMAS JERMYN</p> <p>2 A.   Yes.</p> <p>3 Q.   When I'm talking about this, I mean Exhibit</p> <p>4 B, the Tristate advertisement?</p> <p>5 A.   Yes.</p> <p>6 Q.   Did you go to Tristate again between Best</p> <p>7 Buy on May 18th or 19th and when you</p> <p>8 actually purchased a Tristate Camera?</p> <p>9 A.   No.</p> <p>10 Q.   Just to be clear, when you went into</p> <p>11 Tristate before May 18th or 19th, but after</p> <p>12 you purchased the Best Buy camera, did you</p> <p>13 specifically ask Tristate if they had the</p> <p>14 same prices online that they had in the</p> <p>15 brick and mortar store or did you not know?</p> <p>16 A.   I don't know. I don't recall.</p> <p>17 Q.   You don't specifically remember asking them</p> <p>18 if I go on your website will you have the</p> <p>19 same prices?</p> <p>20 A.   I think I did. I remember the guy I spoke</p> <p>21 about, I remember the salesperson there, he</p> <p>22 said yeah, you know, we have the same</p> <p>23 prices.</p> <p>24 Q.   I don't want you to guess. If you don't</p> <p>25 recall, that's fine.</p>

24 (Pages 90 to 93)

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THOMAS JERMYN, MAY 2, 2008

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 A. I do recall. I said give me your flier or	2                   questions I'm going to ask, but just answer
3 something.	3                   the question that I ask. You went straight
4 Q. So then after May 18th or 19th you went in,	4                   to the customer service desk?
5 printed this off, which is Exhibit B, and	5 A. Yes.
6 then your first step was to go back to Best	6 Q. Who was working back there?
7 Buy or to go to Tristate?	7 A. There were a few people standing there, but
8 A. Back to Best Buy.	8                   right away they just told me no, we are not
9 Q. You went back on May 20th?	9                   taking that back. I asked them -- I started
10 A. Yes.	10                  having a discussion with them.
11 Q. You walked in the store?	11 Q. Now, you are anticipating my question again.
12 A. Yes.	12                  All I want to know is do you remember who
13 Q. You had your camera in your bag?	13                  the person was that was working that day,
14 A. All the original packaging, receipts, bags	14                  yes or no?
15 and everything and this in my hand	15 A. No.
16 (indicating).	16 Q. Was it the same person that was working on
17 Q. Did you open the camera box?	17                  May 18th or 19th?
18 A. Yes.	18 A. I don't recall.
19 Q. Did you get the camera out?	19 Q. In fact, you did speak to somebody then,
20 A. Yes.	20                  that one person behind the customer service
21 Q. Did you -- (interrupted)	21                  desk?
22 A. I used the camera.	22 A. Yes.
23 Q. You used the camera?	23 Q. Do you recall whether or not this was a male
24 A. Yes. It worked fine.	24                  or female?
25 Q. The camera worked fine?	25 A. Female.
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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 A. Yes. It worked fine, there was nothing	2 Q. Do you know how old she was?
3 wrong with it.	3 A. Early 20s.
4 Q. There was nothing defective?	4 Q. Do you know whether or not she was a
5 A. No.	5                  manager?
6 Q. You went back into Best Buy?	6 A. She wasn't.
7 A. And then I tried to show them what was going	7 Q. I just want to know, what did you say to
8 on. I figured it was quick in, quick out.	8                  this person?
9 I wanted to keep the camera. Just honor	9 A. I want to return this or I want to see if
10 this price, check my receipt, honor that	10                  you will honor the Price Match Guarantee.
11 price. I don't care about the extra 10	11 Q. And you had a copy of Exhibit B in your
12 percent. Do what you say you are going to	12                  hand?
13 do. Then they said -- then the stonewalling	13 A. Yes. And the receipt and the camera.
14 process started. I started detecting a	14 Q. What was the first thing she said to you?
15 little change in their demeanor.	15 A. We can't honor this. We can't take this
16 Q. I'll ask you about that. Let's go back.	16                  back.
17 You went in the Best Buy store with the	17 Q. Why?
18 camera in the bag. Did you go over to the	18 A. She didn't give me a reason. I said give me
19 customer service desk right away?	19                  a reason. Where -- I think I had a copy of
20 A. Right away. That's when I noticed something	20                  the Best Buy Price Match Guarantee in my
21 was funny.	21                  hand. I'm pointing to it asking where on it
22 MR. BRAUNSTEIN:	22                  does it say, show me where. After awhile
23 Listen to the question.	23                  they said -- (interrupted)
24 MS. DAUGHERTY:	24                  MR. BRAUNSTEIN:
25 Q. Sir, I know that you know what I'm -- what	25                  Just talk about this conversation, one

25 (Pages 94 to 97)

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THOMAS JERMYN, MAY 2, 2008

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<p>1                   THOMAS JERMYN</p> <p>2                   thing at a time.</p> <p>3    MS. DAUGHERTY:</p> <p>4    Q.   So you said you had a copy of the Price</p> <p>5                   Match Policy in your hand and you said you</p> <p>6                   want the benefit of the Price Match</p> <p>7                   Guarantee?</p> <p>8    A.   Yes.</p> <p>9    Q.   Where did you get a copy of the Price Match</p> <p>10                  Policy?</p> <p>11   A.   It was what I had, like I said, I picked it</p> <p>12                  up from the store. I think it was in</p> <p>13                  Dutchess County.</p> <p>14   A.   So the copy that you had at home?</p> <p>15   A.   Yes.</p> <p>16   Q.   She said no and she didn't give you a reason</p> <p>17                  why initially?</p> <p>18   A.   Right.</p> <p>19   Q.   You asked for an explanation?</p> <p>20   A.   Yes.</p> <p>21   Q.   What did she say?</p> <p>22   A.   I said show me on this form where the</p> <p>23                  exception is that you are not taking this</p> <p>24                  back. I don't see it. I'm fulfilling all</p> <p>25                  the conditions, it's been fourteen days</p>	<p>1                   THOMAS JERMYN</p> <p>2    Q.   You said get a manager?</p> <p>3    A.   Yes.</p> <p>4    Q.   What did the manager say?</p> <p>5    A.   He categorically denied it, backing her up.</p> <p>6                  I think I got angry -- (interrupted)</p> <p>7    MR. BRAUNSTEIN:</p> <p>8                  Just what he said.</p> <p>9    A.   He said no. I answered back why? Look on</p> <p>10                 the form. You should honor this. He kept</p> <p>11                 saying no. He just kept saying no.</p> <p>12   MS. DAUGHERTY:</p> <p>13   Q.   The manager comes over to you. You say here</p> <p>14                 is everything. Here is the camera, the</p> <p>15                 receipt, the advertisement, match this price</p> <p>16                 and he said to you we can't?</p> <p>17   A.   Correct. That's all he said.</p> <p>18   Q.   You asked for an explanation?</p> <p>19   A.   Only like the only thing he could tell me</p> <p>20                 was we only match major chains.</p> <p>21   Q.   That's what he told you?</p> <p>22   A.   I said where does it say major chains in</p> <p>23                 here? That to me was an admission of guilt</p> <p>24                 right there. As soon as he said that, I</p> <p>25                 said fine, okay, major change, I don't see</p>
Page 99	Page 101
<p>1                   THOMAS JERMYN</p> <p>2                   and -- (interrupted)</p> <p>3    MR. BRAUNSTEIN:</p> <p>4                  The question was what she said.</p> <p>5    A.   She said no.</p> <p>6    MR. BRAUNSTEIN:</p> <p>7                  Was that the question?</p> <p>8    MS. DAUGHERTY:</p> <p>9                  Yes.</p> <p>10   A.   I asked her -- she asked about the form.</p> <p>11   Q.   What did she say to you? What was the</p> <p>12                 reason given?</p> <p>13   A.   No reason. That's why I was getting angry,</p> <p>14                 she wasn't giving me a reason.</p> <p>15   Q.   You showed her the form, you said show me on</p> <p>16                 this form -- (interrupted)</p> <p>17   A.   What your reasons are why you won't accept</p> <p>18                 this return, Price Match. I don't want a</p> <p>19                 return, I wanted the Price Match.</p> <p>20   Q.   What did she say?</p> <p>21   A.   She said we can't match the competitor's</p> <p>22                 price.</p> <p>23   Q.   And she didn't give you any reason</p> <p>24                 whatsoever?</p> <p>25   A.   No.</p>	<p>1                   THOMAS JERMYN</p> <p>2                  anything in writing in there, unless you can</p> <p>3                  show me an asterisks or some fine print.</p> <p>4                  Right away I knew I had a good case as soon</p> <p>5                  as he said that.</p> <p>6    MR. BRAUNSTEIN:</p> <p>7                  Talk about what he said.</p> <p>8    A.   He just said major chains. I said I don't</p> <p>9                  see major chains in here, show me.</p> <p>10   MS. DAUGHERTY:</p> <p>11   Q.   The only reason that the manager gave you</p> <p>12                 for not matching the price is the fact Best</p> <p>13                 Buy only matched major chains?</p> <p>14   A.   Yes.</p> <p>15   Q.   That's the only thing?</p> <p>16   A.   That's all he said.</p> <p>17   Q.   After he said that, what did you do?</p> <p>18   A.   I said okay, charge me the restocking fee,</p> <p>19                 I'll go buy it over there, you will see me</p> <p>20                 in court, I'm an attorney and they said, oh,</p> <p>21                 we don't care.</p> <p>22   Q.   Anything else they said?</p> <p>23   A.   Then they just got nasty with me. Fine,</p> <p>24                 didn't even offer me any kind of</p> <p>25                 consideration, they just wanted me out of</p>

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THOMAS JERMYN, MAY 2, 2008

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<p>1                   THOMAS JERMYN</p> <p>2 the store. It was like the voices were</p> <p>3 getting raised. It was almost like they</p> <p>4 were trying to quickly get me out of there.</p> <p>5 Nobody was saying a word and then it just --</p> <p>6 they weren't answering my question</p> <p>7 basically. I said okay, fine, let's pay the</p> <p>8 restocking fee. I added it up and it was --</p> <p>9 even with the restocking fee it was \$59</p> <p>10 less.</p> <p>11 MR. BRAUNSTEIN:</p> <p>12                   Or 49.</p> <p>13 A. 59. So I didn't feel like making a big</p> <p>14 issue out of it after that.</p> <p>15 MS. DAUGHERTY:</p> <p>16 Q. There's no question before you right now,</p> <p>17 sir. Take a look at Exhibit C now.</p> <p>18                   (Document submitted)</p> <p>19 A. Okay.</p> <p>20 Q. Do you recognize this document?</p> <p>21 A. Yes.</p> <p>22 Q. Tell me what this document is, please?</p> <p>23 A. This was the receipt for when I went in</p> <p>24 there on the 20th giving back the --</p> <p>25 returning the camera and the 15 percent</p>	<p>1                   THOMAS JERMYN</p> <p>2 that you purchased the camera?</p> <p>3 A. No.</p> <p>4 Q. And have you been in the store since that</p> <p>5 date?</p> <p>6 A. I think I might have bought a lens cap there</p> <p>7 or lens cleaner, lens paper, some little</p> <p>8 things. It's a good store for that kind of</p> <p>9 stuff.</p> <p>10 Q. So since May 20th, 2005 you maybe have been</p> <p>11 in the store a couple of times?</p> <p>12 A. Yes.</p> <p>13 Q. Made a couple of small purchases?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether or not Tristate has a</p> <p>16 Price Match Policy?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Had you purchased anything at Tristate</p> <p>19 before purchasing the D70?</p> <p>20 A. Yes.</p> <p>21 MR. BRAUNSTEIN:</p> <p>22                   Objection. Asked and answered. You</p> <p>23 can answer.</p> <p>24 A. Yes. Like I said, I think I might have</p> <p>25 bought a camera bag there, small things like</p>
<p>1                   THOMAS JERMYN</p> <p>2 restocking fee was charged to my account.</p> <p>3 Q. The net return then was \$1,107.96?</p> <p>4 A. Yes. Correct. I didn't bring back the</p> <p>5 battery.</p> <p>6 Q. Or the i-Trip?</p> <p>7 A. Yes.</p> <p>8 MS. DAUGHERTY:</p> <p>9                   Off the record.</p> <p>10</p> <p>11                   (OFF THE RECORD DISCUSSION)</p> <p>12</p> <p>13 Q. You then went to Tristate after Best Buy;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you purchased the camera, the same exact</p> <p>17 camera, D70 at Tristate?</p> <p>18 A. Yes.</p> <p>19 Q. You did not order the camera online?</p> <p>20 A. No.</p> <p>21 Q. From Tristate?</p> <p>22 A. No.</p> <p>23 Q. You just purchased it at the store?</p> <p>24 A. Yes.</p> <p>25 Q. Have you shopped at Tristate since the date</p>	<p>1                   THOMAS JERMYN</p> <p>2 lens paper, like some lens cleaner, things</p> <p>3 like that. It's a good basic photography</p> <p>4 supply store.</p> <p>5 MS. DAUGHERTY:</p> <p>6 Q. Do you know the address of Tristate?</p> <p>7 A. Yes. It's at the corner of 20th and 6th</p> <p>8 Avenue, so there's two addresses. They have</p> <p>9 a 6th Avenue address and also a 20th Street</p> <p>10 address.</p> <p>11 Q. When you went into Tristate, did you take a</p> <p>12 copy of the online advertisement with you?</p> <p>13 A. No.</p> <p>14 Q. Did you ever see a copy of Exhibit B, which</p> <p>15 is a Tristate advertisement, in the Tristate</p> <p>16 store before you purchased that camera?</p> <p>17 A. No.</p> <p>18 Q. So the only place you saw that advertisement</p> <p>19 was online?</p> <p>20 A. Right.</p> <p>21 Q. And I believe you stated you thought that</p> <p>22 you spoke to the salesperson at Tristate</p> <p>23 about the prices online being the same as in</p> <p>24 the store?</p> <p>25 A. Yes.</p>
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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 just purchase it from the salesclerk?	2 MS. DAUGHERTY:
3 A. Salesclerk.	3 Q. You can't ask your attorney. Off the top of
4 Q. So if I understand what you told me, the	4 your head right now -- (interrupted)
5 only time you spoke with a manager at Best	5 A. I know I have something written down, but I
6 Buy in your three visits between May 13th	6 don't have it with me. Simons I believe.
7 and May 20th was the very last time when you	7 It was a woman's name. She wrote 1-888-Best
8 attempted to return the camera; is that	8 Buy.
9 correct?	9 Q. If we don't look at that document today,
10 A. Correct.	10 I'll ask you to produce that to your
11 Q. Now, did you ever call Best Buy Customer	11 attorney.
12 Service?	12 A. Okay.
13 A. No.	13
14 Q. Did you ever escalate the problem to a	14 (REQUESTED INFORMATION HERE)
15 higher level other than talking to that	15
16 manager? I guess other than bringing this	16 Q. Other than that name, do you have any names
17 lawsuit as well?	17 of anyone else that you spoke with at Best
18 A. No.	18 Buy during that period of time?
19 Q. You understand what I'm asking, did you ask	19 A. No.
20 to speak to additional management when you	20 Q. Do you agree that it would have been helpful
21 were in there that day?	21 to get the names of the individuals that you
22 A. How many levels -- (interrupted)	22 talked to who made oral representations to
23 MR. BRAUNSTEIN:	23 you?
24 Listen to the question.	24 MR. BRAUNSTEIN:
25 A. No. When they sent the first manager out	25 Objection to the form. You can
Page 111	Page 113
1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 and he looked at me like I'm from Mars, I	2 answer.
3 didn't think I could go much further than	3 A. Yes.
4 that.	4 MS. DAUGHERTY:
5 MS. DAUGHERTY:	5 Q. Why did you not do that?
6 Q. Did you call any Best Buy corporate	6 A. I think I did. In fact, I remember asking
7 telephone number to complain about this	7 and no one wanted to give me their name. It
8 situation?	8 was one thing after another when I was in
9 A. No.	9 the store. It was a total insult to my
10 Q. Did you complain about this to any other	10 intelligence -- (interrupted)
11 entities such as the Better Business Bureau?	11 MR. BRAUNSTEIN:
12 A. No.	12 Answer the question.
13 Q. Did you complain about it to the Department	13 MS. DAUGHERTY:
14 of Commerce?	14 Q. Is the answer yes or no?
15 A. No.	15 A. Yes.
16 Q. It's true that of all the people that you	16 Q. You did get other names?
17 spoke to in your three visits between May	17 A. No, I tried to get names, but I didn't get
18 13th and May 20th, you can't tell me the	18 any names.
19 names of any of these individuals; is that	19 Q. You have been to Best Buy on a number of
20 right?	20 occasions?
21 A. I have a name -- don't I have a name that	21 A. Yes.
22 was written down in pencil?	22 Q. Are you aware Best Buy personnel employees
23 MR. BRAUNSTEIN:	23 wear name badges?
24 You can't ask me.	24 A. I don't remember seeing anyone with a name
25	25 badge.

29 (Pages 110 to 113)

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<p>1                   THOMAS JERMYN  2   say that? I kept focusing on that and they  3   wouldn't listen to me. I got angry and I  4   don't remember if they threatened to take me  5   out of the store or call the cops on me, but  6   I realized I might leave the store.  7   Q. Did you raise your voice in anger?  8   A. Yes, definitely.  9   Q. You mentioned "they" many times. From what  10   you've told me, you spoke with one person at  11   the customer service desk and then --  12   (interrupted)  13   A. There were other people gathering around --  14   (interrupted)  15   Q. There's no question pending yet. I have to  16   ask it in its entirety. In addition to the  17   one person at the customer service desk, you  18   told me you spoke to a manager. Is there  19   anybody else that you spoke to that day at  20   Best Buy?  21   A. By the time I left it seemed like there were  22   five people on the other side of that table.  23   From the clerk to the salesperson maybe, I  24   didn't -- it all kind of blended together.  25   I don't recall who specifically the</p>	<p>1                   THOMAS JERMYN  2   did any of them say anything to you?  3   A. No.  4   Q. They just stood there and watched?  5   A. Stood there and watched. It was almost like  6   they were trained.  7   MS. DAUGHERTY:  8                   Off the record.  9  10                   (OFF THE RECORD DISCUSSION)  11  12   Q. You mentioned that you just said it was like  13   they were trained and you mentioned saying  14   this seemed like a conspiracy. Do you  15   remember saying that?  16   A. Yes.  17   Q. You have no evidence that there was any type  18   of conspiracy going on at Best Buy, do you?  19   MR. BRAUNSTEIN:  20                   Objection to the form. You can  21   answer.  22   A. No. It was just odd that nobody was  23   answering my questions and it was just  24   silence, silence, silence and it took about  25   five minutes for the guy to come out. It</p>
<p>1                   THOMAS JERMYN  2   salesperson was.  3   MR. BRAUNSTEIN:  4                   We are talking about May 20th now.  5   A. When I left the store it could have been the  6   person that sold me the camera, could have  7   been the cashier, could have been the  8   customer service person. There were like  9   four or five people, including the manager  10   on the other side of the table against me.  11   I was trying to get my point across, it  12   wasn't just one person. Nobody was really  13   saying anything.  14   MS. DAUGHERTY:  15   Q. Did any other person -- (interrupted)  16   A. Was there any other person that I remember?  17   No, it was just they were categorically  18   denying everything I said. He said no, we  19   don't honor this here, we only honor major  20   chains. I was trying to get at what do you  21   define as a major chain? What's a major  22   chain, what's a major chain and nobody  23   answered me.  24   Q. When you said there were multiple people  25   gathering behind this customer service desk,</p>	<p>1                   THOMAS JERMYN  2   was just like I said, as if they were  3   observing some protocol for this type of  4   situation because nobody would say a word to  5   me. You would think in most situations a  6   staff member of the store would try to calm  7   down an irate customer.  8   MS. DAUGHERTY:  9   Q. Would you agree you were irate?  10   A. Yes.  11   Q. When the manager came, you said you were  12   describing how you demanded more explanation  13   and he said nothing?  14   A. Right.  15   Q. For the first couple times is what I  16   understand?  17   A. Yes.  18   Q. Was he just quiet?  19   A. Yeah. He just listened to me. He made me  20   state my case. I said it succinctly that I  21   bought the camera here, here is your Price  22   Match Guarantee, please match it, I found  23   this at Tristate. I'd love to be your  24   customer, can you do this for me and he said  25   no, we can't do that.</p>

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 Q. That's when you asked for an explanation?	2 A. No.
3 A. Yes.	3 Q. Unless they were answering a question that
4 Q. And he just stood there and looked at you?	4 you posed, that you already described to me?
5 A. Yes. Look at this, we matched this, here is	5 MR. BRAUNSTEIN:
6 the ad you need, why can't you do this.	6                   Other than previous testimony?
7 Q. Other than him saying to you, no, we don't	7 MS. DAUGHERTY:
8 do it or in some way saying that and telling	8                   Right.
9 you that it's because Best Buy only matches	9 A. Yes.
10 retail chains, do you remember --	10 Q. Have you ever read the Price Match Policy in
11 (interrupted)	11 full?
12 MR. BRAUNSTEIN:	12 A. Yes.
13                   Major chains.	13 Q. Your testimony is that you understood the
14 MS. DAUGHERTY:	14 Price Match Policy?
15                   Sorry.	15 A. Yes.
16 Q. Major chains, do you remember anything else	16 Q. To the best of your knowledge?
17 specifically that this manager said to you?	17 A. Yes, sure, yeah.
18 A. No. Other than just go ahead, sue us,	18 MS. DAUGHERTY:
19 things like that.	19                   Mark this.
20 Q. Do you personally -- other than the blogs	20
21 you read, and I'm talking personally, do you	21                   (PRICE MATCH GUARANTEE WAS RECEIVED
22 know someone who tried to get the benefit of	22                   AND MARKED AS DEFENDANT'S EXHIBIT E
23 Best Buy's Price Match?	23                   FOR IDENTIFICATION)
24 A. No.	24
25 Q. When I say that, I mean either successfully	25 Q. Sir, showing you what has been marked as
Page 123	Page 125
1                   THOMAS JERMYN	1                   THOMAS JERMYN
2 got the benefit of the Price Match meaning	2                   Defendant's Exhibit E. Take a moment to
3 it worked or had a situation wherein they	3 review that document.
4 were denied the benefit of Price Match, you	4                   (Document submitted)
5 don't know anyone?	5 A. Okay.
6 A. No, either one.	6 Q. Do you know what that is?
7 Q. You never wrote any letters or e-mails to	7 A. Yes.
8 Best Buy or any other entities complaining	8 Q. What is that document?
9 of this?	9 A. Price Guarantee Customer FAQs.
10 A. No.	10 Q. Is this a copy of the Price Match Policy you
11 Q. It's your testimony that you thought it was	11 had in your possession that you brought into
12 sufficient to go to the manager and I think	12 Best Buy on May 20th?
13 you said you wouldn't get anywhere if you	13 A. I'm not sure because I think the one that I
14 called or took it to a higher level?	14 had might have been in color. It was
15 A. Right.	15 different kind of paper, but I'm not sure.
16 Q. You had a copy of the Best Buy Price Match	16 It says basically the same thing.
17 Policy and I believe that's what you took in	17 Q. There's some handwriting at the bottom. Do
18 on May 20th; is that right?	18 you see that?
19 A. The copy that you mentioned, yeah. It	19 A. Yes.
20 wasn't the 20th, it was before that. That I	20 Q. There's a name?
21 brought in?	21 A. Yes.
22 Q. Yes.	22 Q. Is that your handwriting?
23 A. Yes.	23 A. No.
24 Q. Did anybody explain the Price Match Policy	24 Q. The name -- I don't know what this first
25 to you in terms of what it covered?	name is, starts with a G?

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THOMAS JERMYN, MAY 2, 2008

<p style="text-align: right;">Page 130</p> <p>1           THOMAS JERMYN    2 feel like pursuing anything with Best Buy.    3 I didn't want to ever utter the name again    4 after what I went through.</p> <p>5 Q. To the best of your recollection, you got    6 this document after May 20th, 2005 or you    7 had the name written on the document after    8 May 20th, 2005?</p> <p>9 A. Yes.</p> <p>10 Q. You just said, sir, you didn't want to hear    11 the name Best Buy again, you didn't feel it    12 would be useful at all to follow up on this.    13 Why didn't you go into the store to get this    14 person's name?</p> <p>15 A. I'm not sure what my rationale was at that    16 time. I might have been trying to pursue it    17 or thinking I might want to do something on    18 it. It was sitting on my desk and I made a    19 few calls. Until these guys came along it    20 wasn't really going anywhere. The camera    21 worked. I kind of put it behind me after a    22 little while.</p> <p>23 Q. Is it fair to say earlier in your testimony    24 you didn't follow up with any person higher    25 than management at Best Buy with regard to</p>	<p style="text-align: right;">Page 132</p> <p>1           THOMAS JERMYN    2 MR. BRAUNSTEIN:    3 Listen to the question.</p> <p>4 MS. DAUGHERTY:</p> <p>5 Q. You don't know whether or not you went back    6 into the 23rd Street store, the Chelsea    7 store at any time after May 20th until let's    8 say the rest of the year?</p> <p>9 A. I'm not sure.</p> <p>10 Q. In any event, you did not call this 1-888    11 number?</p> <p>12 A. No. If I did anything, I just went online.</p> <p>13 MR. BRAUNSTEIN:    14 Listen to the question. The question    15 is did you call this number?</p> <p>16 THE WITNESS:    17 No.</p> <p>18 MR. BRAUNSTEIN:    19 Listen to the question and answer the    20 question.</p> <p>21 MS. DAUGHERTY:    22 Q. This is the version of the Price Match    23 Policy that you think Best Buy violated?</p> <p>24 MR. BRAUNSTEIN:    25 Object to the form, but you can answer</p>
<p style="text-align: right;">Page 131</p> <p>1           THOMAS JERMYN    2 this incident?</p> <p>3 A. Yes.</p> <p>4 Q. It's true at some point after May 20th you    5 went into a Best Buy store; right?</p> <p>6 A. No.</p> <p>7 MR. BRAUNSTEIN:    8 Listen to the question.</p> <p>9 A. I'm not sure.</p> <p>10 MS. DAUGHERTY:    11 Q. You don't know if you went into a Best Buy    12 store?</p> <p>13 A. This could have been done on the 20th. It    14 could have been done the moment before I    15 blew up or when somebody put their name on    16 here. I don't remember. I just see    17 someone's name on there. They are not in    18 the habit of putting their name -- I    19 remember asking somebody their name    20 throughout this entire ordeal. I don't    21 remember if I ever went back into the 23rd    22 Street store. It might have been on the    23 20th when I did this. I'm not exactly sure    24 though.</p>	<p style="text-align: right;">Page 133</p> <p>1           THOMAS JERMYN    2 over objection.</p> <p>3 A. Yes.</p> <p>4 MS. DAUGHERTY:</p> <p>5 Q. As a class representative of this class    6 action, this is the substance of the policy    7 that you believe was violated?</p> <p>8 MR. BRAUNSTEIN:    9 Same Objection. You can answer.</p> <p>10 A. Yes.</p> <p>11 MS. DAUGHERTY:    12 Q. I'm going to go ahead and have you look    13 through this document. If you need a    14 minute, that's fine. Tell me if you see    15 anything relating to online price matching.</p> <p>16 A. I don't see anything that says anything    17 about online price matching. Oh, yeah, it    18 says -- no, that says processed online.</p> <p>19 Q. Other than that, sir, anything else that you    20 see relating that mentioned online price    21 matching?</p> <p>22 A. No.</p> <p>23 Q. I'll represent to you that Exhibit E and    24 what we will marked as Exhibits F and G were    25 sent to me as one exhibit, as one document.</p>

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THOMAS JERMYN, MAY 2, 2008

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1	THOMAS JERMYN	1	THOMAS JERMYN
2 Q.	Were you satisfied with the products you	2 Q.	Where else do you shop for electronics now?
3 purchased at Best Buy?		3 A.	PC Richards, J&R Music. That's about it.
4 A.	Yes.	4 Q.	You have never -- (interrupted)
5 Q.	Other than CDs, what types of products have	5 A.	Oh, Wal-Mart.
6 you purchased at Best Buy?		6 Q.	Do you know whether any of those stores has
7 A.	Maybe like a stereo, maybe a card for a	7	a Price Match Guarantee?
8 camera.		8 A.	Wal-Mart does.
9 Q.	Had you ever returned anything to Best Buy?	9 Q.	You have never tried to utilize that though?
10 A.	No.	10 A.	No.
11 Q.	Never before?	11 Q.	Ever been a member of Best Buy's Reward
12 A.	No.	12	Zone?
13 Q.	The first product you ever returned to Best Buy was this Nikon camera?	13 A.	No.
14		14 Q.	We have looked at a number of exhibits
15 A.	Yes.	15	today. Do you have anything else in your
16 Q.	So obviously then would it be fair to say	16	possession relating to the May 2005
17 you've already been satisfied with your		17	transaction?
18 purchases from Best Buy?		18 A.	No.
19 A.	Yes.	19 Q.	Have you reviewed Best Buy's document
20 Q.	Have you stepped foot in a Best Buy store	20	requests?
21 since May 2005?		21 A.	Yes.
22 MR. BRAUNSTEIN:		22 Q.	Do you know of any other documents that you
23 Other than what he may have testified		23	may have in your possession that are
24 to already?		24	responsive to those document requests that
25		25	you have not provided to your attorney?
Page 151		Page 153	
1	THOMAS JERMYN	1	THOMAS JERMYN
2	MS. DAUGHERTY:	2 A.	No.
3	Yes, other than what he may have	3 Q.	How would you define yourself, the class of
4 testified to that was in connection with		4	persons you hope to represent in this case?
5 this particular incident. I know he said he		5 A.	People that have depended on and relied upon
6 might have gone back to get the name.		6	Best Buy's representation for being a low
7 A.	No.	7	price electronics and equipment vendor and
8 Q.	Other than in either May 2005 or after to	8	gone in there and been stuck and been in the
9 get the name of Miss Simons, you haven't		9	same position and situation that I'm in by
10 stepped foot in a Best Buy store?		10	buying something and thinking they are
11 A.	No.	11	getting the lowest price and I would like to
12 Q.	Have you ever purchased anything from a Best	12	prevent that so people know maybe they
13 Buy?		13	should shop around before they buy at Best
14 A.	Yes.	14	Buy. And if they have been refused like me
15 Q.	I'm sorry, since May 2005?	15	and had to pay the restocking fee, then they
16 A.	No.	16	should be compensated for that.
17 Q.	How about online from Best Buy?	17 Q.	So the class of persons you hope to
18 A.	No.	18	represent have been affected in some way by
19 Q.	Do you plan to shop at Best Buy again in the	19	the Price Match Policy?
20 future?		20 A.	The failure to honor it.
21 A.	No.	21 Q.	When is the time last -- when was the time
22 Q.	Do you have family that shops at Best Buy?	22	frame --
23 A.	No.	23	MS. DAUGHERTY:
24 Q.	Did they before this incident?	24	Strike that.
25 A.	Yes.	25 Q.	What is the time frame in which the class of

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THOMAS JERMYN, MAY 2, 2008

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<p>1                   THOMAS JERMYN  2        you -- let's say for some reason they were  3        denied so they never ended up purchasing  4        from Best Buy?  5        MR. BRAUNSTEIN:  6           Hold on. Off the record.</p> <p>8                   (OFF THE RECORD DISCUSSION)</p> <p>10      MS. DAUGHERTY:  11       I will withdraw the last question.  12      Q.    You are talking about people that would  13        bring in an advertisement to Best Buy --  14        (interrupted)  15      A.    Say there's a TV -- (interrupted)  16      MR. BRAUNSTEIN:  17       Let her ask the question.  18      MS. DAUGHERTY:  19      Q.    An employee would say this would not be  20        valid for the Price Match so they never  21        ended up purchasing from Best Buy?  22      A.    Yes.  23      Q.    And those are the people that you feel  24        should be in the class, yes or no?  25      A.    Yes.</p>	<p>1                   THOMAS JERMYN  2        MR. BRAUNSTEIN:  3           Object to the form. You can answer.  4        MS. DAUGHERTY:  5      Q.    Right?  6      A.    Yes.  7      Q.    So you would agree with me that it could be  8        based on what you said you were told because  9        Best Buy only matches major chains?  10     A.    According to what they told me, yes.  11     Q.    You agreed that there could be denials of  12        the Price Match Policy because of the time  13        frame, thirty days or fourteen days?  14     A.    Yes.  15     Q.    You would agree with me that there could be  16        other denials of the Price Match Policy  17        because the product was purchased online at  18        a certain time?  19     A.    Yes.  20     Q.    And you also agree with me when we looked at  21        these Price Match versions in Exhibits E and  22        F they differ?  23     A.    Right.  24     Q.    And are you aware whether or not Best Buy  25        changed its Price Match Policy at all in</p>
<p>1                   THOMAS JERMYN  2      Q.    I believe you said that there are a lot of  3        difference with circumstances and the Best  4        Buy match; right?  5      A.    Gift cards, things like that.  6      MR. BRAUNSTEIN:  7           Objection to the form. You can  8        answer.  9      A.    Gift cards, thing like that.  10     MS. DAUGHERTY:  11     Q.    In somebody else's case there could have  12        been gift cards, rebate issues?  13     A.    Yes.  14     Q.    They could have purchased the product like  15        you?  16     A.    Yes.  17     Q.    And there's people that you said that didn't  18        end up purchasing the product because they  19        brought in an ad and Best Buy said they  20        wouldn't match it for one reason or another;  21        right?  22     A.    Right.  23     Q.    You would agree with me too that there could  24        be a variety of reasons why a Price Match  25        was not met; right?</p>	<p>1                   THOMAS JERMYN  2        that period of time?  3      A.    I'm not aware of that.  4      Q.    So we have talked about a number of factors.  5        You agree with me that there's a lot of  6        different circumstances?  7      A.    Yes.  8      Q.    And your class would take account for all of  9        these different circumstances; right?  10     A.    If it would become burdensome, no. We would  11        limit it to the people that just got charged  12        the restocking fee.  13     Q.    Your testimony is that all of these people  14        should be included?  15     A.    Yes.  16     Q.    You realize there's all these different  17        circumstances such as different reasons to  18        be denied the Price Match Policy?  19     A.    Yes.  20     Q.    Different advertisements, you realize people  21        could bring in different advertisements from  22        different stores?  23     A.    Yes.  24     Q.    You realize people could bring in  25        advertisements from other stores, but they</p>

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1                   THOMAS JERMYN	1                   THOMAS JERMYN
2   could get the Price Match Policy with an	2   likely do not have any paper documentation
3   online ad?	3   with Best Buy because they never purchased
4   A. Yes.	4   anything at Best Buy?
5   Q. As a plaintiff you would represent all these	5   A. Yes.
6   people?	6   Q. You would agree it would be hard to quantify
7   A. Yes.	7   the damages that those people suffered?
8   Q. You mentioned that you travel to Florida and	8   A. Right.
9   South Carolina for work?	9   Q. Would you agree then that in that situation
10 A. Yes.	10   it would perhaps be difficult to group them
11 Q. You understand that if your class is	11   with other situations such as yours?
12   certified that it will be in litigation	12   A. Yes.
13   venued here in the Southern District of New	13   MR. BRAUNSTEIN:
14   York?	14   October to the form.
15 A. Yes.	15   MS. DAUGHERTY:
16 Q. You realize that there is time commitments	16   Q. You had testified earlier about various oral
17   associated with that?	17   representations made to you by Best Buy
18 A. Yes.	18   personnel?
19 Q. With the time commitment that you have with	19   A. Yes.
20   your job and travel you would be able to	20   Q. You would agree with me that the same oral
21   accommodate that?	21   representations that were made to you are
22 A. Yes.	22   very likely not the exact same
23 Q. Why else do you think you are qualified to	23   representations word for word that were made
24   be the class representative?	24   for someone else?
25 A. I'm an attorney. I have twenty years of	25
Page 163	Page 165
1                   THOMAS JERMYN	1                   THOMAS JERMYN
2   experience and I'm uniquely situated that I	2   MR. BRAUNSTEIN:
3   was wronged by Best Buy so I can understand	3   Objection to the form. Calls for
4   the way the company treats people in my	4   speculation. You can answer over objection.
5   situation and I'll be a good advocate in	5   A. Hard to tell. I have no way of knowing.
6   their behalf.	6   MS. DAUGHERTY:
7   Q. It's fair to say you are not involved in	7   Q. Are you aware of a secret intranet site that
8   consumer litigation?	8   Best Buy operates?
9   A. Correct.	9   A. I read about that.
10 Q. How would your class involve those people	10 Q. Tell me what you know about that?
11   who came into Best Buy with an ad and were	11 A. They would have one website in the stores
12   turned away from some reason saying that the	12   running that was a mirror, like a copy so
13   Price Match Policy would not be a benefit?	13   people would look on it and it was different
14   MR. BRAUNSTEIN:	14   from the actual internet site and it had
15   Object to the form.	15   different prices. I don't know if they had
16   MS. DAUGHERTY:	16   to pay damages on that. It was misleading
17   I didn't complete the question. Let	17   to the consumer. My attorney uncovered
18   me start over.	18   something on that, about that, and I read
19 Q. You did say, correct me if I'm wrong, you	19   about it in the attachments to the complaint
20   did say your class could include people that	20   or the interrogatories.
21   come into Best Buy with an advertisement and	21 Q. It's true that you do not have a separate
22   they would say that the Price Match	22   cause of action in your complaint and you're
23   Guarantee would not apply; is that correct?	23   not alleging a separate cause of action
24 A. Yes.	24   based on any type of violation or anything
25 Q. And you would agree then that those people	25   with regard to this secret intranet site;

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**EXHIBIT NO. 2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
THOMAS JERMYN, on behalf of himself  
and all others similarly situated,

Plaintiff,

-against-

BEST BUY STORES, L.P.,

Defendant.

: CIVIL ACTION NO. 08 CV 00214

: ECF ACTION

: DECLARATION OF  
JENNIFER G. DAUGHERTY  
IN SUPPORT OF BEST BUY STORES,  
L.P.'S MEMORANDUM OF LAW  
IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR CLASS CERTIFICATION

FILED UNDER SEAL

----- X

**EXHIBIT 2**

**CONFIDENTIAL INFORMATION  
SUBJECT TO PROTECTIVE ORDER**

**CASE NO. 08-CV-00214**

**(JUDGE COLLEEN MCMAHON)**

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**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

Anne M. Lockner (admitted *pro hac vice*)

Jennifer G. Daugherty (admitted *pro hac vice*)

2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015  
Tel: (612) 349-8500  
Fax: (612) 339-4181

ATTORNEYS FOR DEFENDANT  
BEST BUY STORES, L.P.

### CERTIFICATE OF SERVICE

Case Name: **THOMAS JERMYN**, on behalf of himself and all others similarly situated v.  
**BEST BUY STORES, L.P.**

Court File No: **08-00214**

I hereby certify that on June 26, 2008, I electronically filed the foregoing documents: DECLARATION OF JENNIFER G. DAUGHERTY, with EXHIBIT 1, AND EXHIBIT 2 (Filed Under Seal), IN SUPPORT OF DEFENDANT BEST BUY STORES, L.P.'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION (Filed Under Seal), and this Certificate of Service with the Clerk of Court using the CM/ECF System, which shall send notification of such filing to the following:

Gary S. Graifman	<a href="mailto:ggraifman@kgglaw.com">ggraifman@kgglaw.com</a>
Todd C. Norbitz	<a href="mailto:tnorbitz@foley.com">tnorbitz@foley.com</a>

In addition, the preceding documents were served in their entirety via electronic email and first-class mail this 26th day of June upon the following:

Gary S. Graifman, Esq.  
Michael L. Braunstein, Esq.  
KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.  
747 Chestnut Ridge Road, Suite 200  
Chestnut Ridge, NY 10977-6216

Todd C. Norbitz, Esq.  
Yonaton Aronoff, Esq.  
FOLEY & LARDNER LLP  
90 Park Avenue  
New York, NY 10016

s/ Jennifer G. Daugherty  
Jennifer G. Daugherty